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**2013 AFSCME MEF/CEO NEGOTIATIONS
UNION PACKAGE PROPOSAL B***

PERIOD OF MEMORANDUM OF AGREEMENT

One (1) Year Term

WAGES – ARTICLE 12

3.5% General Wage Increase
Salary-step freeze for one (1) year

WORKING IN A HIGHER CLASSIFICATION

See Attached (AFSCME Counter-Proposal)

CALL BACK AND STANDBY PAY

See Attached (AFSCME Counter-Proposal)

OVERTIME AND COMPENSATORY TIME

See Attached (AFSCME Counter-Proposal)

SICK LEAVE PAYOUT

See Attached (AFSCME Counter-Proposal)

GRIEVANCE PROCEDURE – TIMELINES

As proposed on June 13, 2013 (AFSCME Counter-Proposal)

DISABILITY LEAVE SUPPLEMENT

As proposed on March 28, 2013 (City Proposal #12)

TENTATIVE AGREEMENTS

Layoff, Tentative Agreement Reached on June 6, 2013
Protective Footwear, Tentative Agreement Reached on January 25, 2013
Uniform Allowance, Tentative Agreement Reached on January 25, 2013
Holidays, Tentative Agreement Reached on May 15, 2013
Grievance Procedure - Arbitrator List Cost-Sharing, Tentative Agreement Reached on
May 15, 2013
Health and Dental-In-Lieu, Tentative Agreement Reached on May 15, 2013
Uniform Allowance – Dispatcher Trainees, Tentative Agreement Reached on May 15,
2013
Citywide Labor Management Committee, Tentative Agreement Reached on May 15,
2013



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Holiday-In-Lieu – Public Safety Dispatcher Class Series, Tentative Agreement Reached
on May 15, 2013

Training Pay, Tentative Agreement Reached on May 23, 2013

Safety, Tentative Agreement Reached on May 23, 2013

SIDELETTER AGREEMENTS

Subsidy for Public Transit, Tentative Agreement Reached on May 23, 2013

Sr. Airport Operations Specialists Pilot Program, Tentative Agreement Reached on June
6, 2013

REOPENERS

- Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retirement benefits upon request of either party in the event that the pension modification ballot measure, also known as Measure B, in part or in whole, is declared invalid or otherwise modified or changed by any court of competent jurisdiction or any other administrative process, or by any applicable State or Federal law or regulation.

** This proposal is submitted in an attempt to reach a settlement. In the event the proposal is not accepted, AFSCME MEF/CEO reserves the right to modify, amend, and/or add proposals.*

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AFSCME COUNTER PROPOSAL – HIGHER CLASS PAY

Proposed MEF Language:

- 12.7 Working in a Higher Classification. Upon specific assignment by the Department Director, or designee, with prior written approval, a full-time or part-time employee may be required to perform the duties of a full-time or benefited part-time position in a higher classification. Such assignments may be made to existing authorized positions which are not actively occupied due to the temporary absence of the regularly appointed employee or a vacant position. Assignments to a higher classification due to a vacancy shall not exceed six (6) months.
- 12.7.1 By mutual written agreement between the City and the Union, an employee assigned to work in a higher classification may be extended in his/her specific assignment past the aforementioned six (6) month limitation.
- 12.7.2 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least five percent (5%) higher in the salary range schedule than the rate received by the employee in the employee's present class. Notwithstanding any other provision of this section, in no event shall an employee receive any amount in excess of the top of the salary range of the higher classification. The employee shall not receive any compensation, however, unless the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive hours within one (1) day. In the event the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive work hours within one (1) day, the employee shall be compensated at the appropriate rate for all eligible hours worked in the higher class within the pay period.
- 12.7.3 Employees assigned to duties of a higher classification for six (6) months due to the vacancy of the higher class position, shall receive the higher class pay for the entire duration of the higher class assignment including paid time off for holidays and city authorized closures where permanent employees in the higher class position are also paid. Exceptions to higher class pay for time off, are approved vacations, sick leave, comp. time, and personal leave, unless it is determined that the employee is required to still be available in the higher class capacity during such time off.

Proposed CEO Language:

- 7.3 Working in a Higher Classification
- 7.3.1 Upon specific assignment by the Department Director, or his/her designated representative, with prior written approval, a full-time or part-time benefited employee may be assigned to perform the duties of a full-time or benefited part-time position in a higher classification. Such assignments may be made to existing



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authorized positions that are not actively occupied due to the temporary absence of the regularly appointed employee or vacant positions. Assignments to a higher classification due to a vacancy shall not exceed six (6) calendar months regardless of the number of actual hours worked in the higher class. Once an employee reaches the six (6) calendar month maximum in a specific higher class assignment due to a vacancy, the employee shall not be eligible to serve in the same higher class assignment for at least six (6) months and shall return to his/her regular assignment.

7.3.1.1 By mutual written agreement between the City and the Employee ~~Organization~~ Union, an employee assigned to work in a higher classification due to a vacancy may be extended in his/her specific assignment past the aforementioned six (6) month limitation.

7.3.2 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least one (1) salary rate (step) five percent (5%) higher in the salary range schedule than the rate received by the employee in the employee's present class. Notwithstanding any other provision of this section, in no event shall an employee receive any amount in excess of the top of the salary range of the higher classification. The employee shall receive higher class pay if the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive hours within one (1) day. In the event the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive work hours within one (1) day, the employee shall be compensated at the appropriate rate for all eligible hours worked in the higher class within the pay period.

7.3.3 Employees assigned to duties of a higher classification for six (6) months due to the vacancy of the higher class position, shall receive the higher class pay for the entire duration of the higher class assignment including paid time off for holidays and city authorized closures where permanent employees in the higher class position are also paid. Exceptions to higher class pay for time off, are approved vacations, sick leave, comp. time, and personal leave, unless it is determined that the employee is required to still be available in the higher class capacity during such time off.

7.3.4 Upon request by the Union, the City will provide a report, no more than quarterly, of the employees working in a higher class pay assignment.

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AFSCME COUNTER PROPOSAL – CALL BACK AND STANDBY PAY

Proposed MEF language:

ARTICLE 12 WAGES AND SPECIAL PAY

12.8 Call Back. An employee who is called back to work in response to an emergency or other unforeseen circumstance shall be credited for the time worked, or for three (3) hours, whichever is greater, at the appropriate rate (1.5). This section shall apply on either a workday after the employee has departed from their place of employment or on a day off. It shall not apply to scheduled overtime or during a regular shift. Employees who are called back multiple times during a standby shift shall not receive additional pay until the employee has worked a total of three (3) hours, after which time the employee would be eligible for additional pay, but only for hours worked.

12.8.1 To the extent possible, when an employee has not had a rest period of at least eight (8) hours, upon request of the employee, the Department Director or designee may approve time off using an employee's available leave, excluding sick leave, to provide the employee with a rest period prior to their next shift.

12.8.2 For purposes of this Article, any paid time off granted to an employee in accordance with 12.8.1, shall be deemed hours worked.

12.9 Standby Pay. Employees who are required to perform standby duty shall be credited with one hour compensation at the appropriate rate (1.5) for each eight (8) hour shift or portion thereof the employee performs standby duty. In the event the employee is called back to work, the employee shall be entitled to the compensation provided by Section 12.8 above, in lieu of the one hour of standby compensation for that eight (8) hour shift.

12.9.1 Standby pay is not deemed as actual hours worked for the purpose of calculating eligibility for overtime.

Proposed CEO language:

7.10 Standby Pay. Employees who are required to perform standby duty shall be credited with one hour compensation at the appropriate rate (1.5) for each eight (8) hour shift or portion thereof the employee performs standby duty. In the event the employee is called back to work, the employee shall be entitled to the compensation provided by Section 7.11 below, in lieu of the one hour of standby compensation for that eight (8) hour shift.

7.10.1 Standby pay is not deemed as actual hours worked for the purpose of calculating eligibility for overtime.



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7.11 Call Back. An employee who is called back to work in response to an emergency or other unforeseen circumstance shall be credited for the time worked, or for three (3) hours, whichever is greater, at the appropriate rate (1.5) . This section shall apply on either a workday after the employee has departed from their place of employment or on a day off. It shall not apply to scheduled overtime or during a regular shift. ~~No employee shall be entitled to more than one (1), three (3) hour minimum call back per eight (8) hour shift. Compensation for subsequent call backs shall be for actual time worked.~~ Employees who are called back multiple times during a standby shift shall not receive additional pay until the employee has worked a total of three (3) hours, after which time the employee would be eligible for additional pay, but only for hours worked.

7.11.1 To the extent possible, when an employee has not had a rest period of at least eight (8) hours, upon request of the employee, the Department Director or designee may approve time off using an employee's available leave, excluding sick leave, to provide the employee with a rest period prior to their next shift.

7.11.2 For purposes of this Article, any paid time off granted to an employee in accordance with 7.11.1, shall be deemed hours worked.

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AFSCME PROPOSAL – OVERTIME AND COMPENSATORY TIME

Proposed MEF language:

ARTICLE 7 HOURS OF WORK AND OVERTIME

7.6 Time spent on paid sick leave, disability leave, holiday leave, ~~vacation leave~~, military leave, any other involuntary compensatory time off duty, or other authorized paid leave shall be deemed time worked for purposes of this Article

7.12 Overtime and Compensatory Time

7.12.1 An employee who works a normal work schedule as defined by Section 7.3 and is authorized or required to work overtime who works in excess of forty (40) hours per work week, shall be compensated at the rate of 1-1/2 times the employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill their work week requirement.

7.12.1.1 Mandatory Overtime assignments shall be compensated at the rate of 1-1/2 times of the employee's hourly rate.

7.12.1.2 If at any time an employee is required to work more than twelve (12) consecutive hours in one shift, whether voluntary or mandatory, the employee shall be compensated at the rate of two (2) times the employee's hourly rate for hours worked beyond twelve (12) hours. At no time should an employee work beyond 14 ½ consecutive hours in one shift.

7.12.2 Part-time employees are ~~only~~ eligible for overtime pay or compensatory time at the rate of 1-1/2 times of the employees' hourly rate if the employee works over ~~twelve (12)~~ eight (8) consecutive hours in the same assignment day, unless they are regularly assigned to a ten (10) hour shift, or over forty (40) hours in one week, or if the overtime exceeds eight (8) hours and is scheduled without a twenty-four (24)-hour notice.

7.12.2.1 For purposes of part-time hours calculations, overtime hours will not count towards the yearly calculations for hours worked in their classification.

Proposed CEO language:

ARTICLE 6 HOURS OF WORK AND OVERTIME

6.7 An employee who works a normal work schedule as defined by Article 6.3 and is authorized or required to work overtime who works in excess of forty (40) hours per work week, shall be compensated at the rate of time and one-half (1-1/2) the employee's hourly



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rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill his/her workweek requirement.

6.7.1 Part-time employees are only eligible for overtime pay if the employee works over forty (40) hours in one (1) week.

6.7.2 Mandatory Overtime assignments shall be compensated at the rate of 1-1/2 times of the employee's hourly rate.

6.7.3 If at any time an employee is required to work more than twelve (12) consecutive hours in one shift, whether voluntary or mandatory, the employee shall be compensated at the rate of two (2) times the employee's hourly rate for hours worked beyond twelve (12) hours. At no time should an employee work beyond 14 ½ consecutive hours in one shift.

6.9.2 Part-time employees who are assigned and work over eight (8) consecutive hours in the same day, unless they are regularly assigned to ten (10) hour shifts, or in excess of forty (40) hours in one week shall be compensated at the time and one-half (1-1/2) rate. A part-time employee who is assigned and works in excess of forty (40) hours per week may elect to either be paid for such overtime or credited with compensatory time off, except under the above listed circumstances.

However, at no time shall a part-time employee's compensatory time balance exceed forty (40) hours. Once an employee's compensatory time balance reaches forty (40) hours, employees shall be paid for all time assigned and worked in excess of forty (40) hours per week.

6.9.2.1 For purposes of part-time hours calculations, overtime hours will not count towards the yearly calculations for hours worked in their classification.

6.10 Time spent on paid sick leave, disability leave, holiday leave, ~~vacation leave~~, military leave, any other involuntary compensatory time off duty, or other authorized paid leave shall be deemed time worked for purposes of this Article.

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AFSCME COUNTERPROPOSAL – GRIEVANCE PROCEDURE

Proposed MEF Language:

ARTICLE 20 GRIEVANCE PROCEDURE

20.3 Step I

20.3.1 An employee may present the grievance orally either directly or through the Union representative to the immediate supervisor. The grievance must be presented within ~~ten~~ (10) thirty (30) working days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within ten (10) working days after receiving the oral grievance, the immediate supervisor shall give the employee a verbal reply.

Proposed CEO Language:

ARTICLE 12 GRIEVANCE PROCEDURE

12.3 STEP I

12.3.1 An employee may present the grievance orally either directly or through the Employee Organization representative to the immediate supervisor. The grievance must be presented within ~~ten (10)~~ thirty (30) working days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within ten (10) working days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.

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AFSCME COUNTER PROPOSAL – SICK LEAVE PAYOUT

Proposed MEF language:

10.3.6 Any employee hired on or after September 30, 2012, shall not be eligible for sick leave payout.

10.3.7 Upon a release of claims set forth in the AFSCME complaint, being signed by the retiree, retroactive payments, including interest shall be made to eligible employees in the Federated City Retirement System, who retired on or after January 1, 2012, and before the date that this proposal is ratified and approved by the City Council, who were eligible for a sick leave payout at the time of their retirement under the requirements contained herein and did not receive the payout because the payouts were eliminated prior to their retirement. Retirees will be eligible for a payout of the amount of unused sick leave hours accrued as of December 31, 2011, or the date of their retirement, whichever is less. Payouts will be based on the provisions contained in Sections 10.3.9 and 10.3.10 below. This will resolve any claims related to sick leave payout upon retirement.

[Insert appropriate language regarding the resolution of pending administrative and legal action pertaining to AFSCME Unfair Practice Charge No. SF-CE-945-M. Provided IBEW agrees with this Agreement, Case No. 1-12-CV-237150 ("AFSCME/IBEW" the Unions will withdraw. The City is responsible for resolving Case No. 1-12-CV-224197 ("Deisenroth"). The City in resolving the "Deisenroth" case will deal directly with the Plaintiff's Counsel]

10.3.8 For employees hired on or before September 29, 2012, a sick leave payout shall be made to full-time and part-time benefited employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:

10.3.8.1 Federated City Retirement System Plan. The employee is: a) a member of the Federated City Retirement System Plan; and, b) retired under the provisions cited in the plan; and, c) credited with at least fifteen (15) years of service in this retirement plan, or credited with at least ten (10) years of service prior to a disability retirement.

10.3.8.2 Terminated Separated Employee with Vesting Rights. The employee has: a) terminated separated from service with the City in good standing and has not been terminated for cause as defined by San José Municipal Code Section 3.04.1370; and, b) retained vesting rights in a retirement system according to provisions in the San José Municipal Code; and, c) following such termination separation, qualifies for retirement and retires under the provisions cited in the code; and, d) has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.

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10.3.8.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan.

10.3.8.4 Death of Terminated Separated Employee. The estate of any full-time or eligible part-time employee who: a) ~~had terminated~~ has separated from service with the City in good standing, and has not been terminated for cause as defined by San José Municipal Code Section 3.04.1370 but had retained vesting rights in a retirement system according to provisions in the San José Municipal Code; and, b) dies (on or after July 10, 1977) prior to becoming eligible for retirement allowances as cited under provisions of the San José Municipal Code; and, c) has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.

10.3.9 Effective June 23, 2013, for purposes of calculating a sick leave payout, an employee's sick leave balance and hourly rates shall be frozen. This means that an employee will receive no more for a sick leave payout, after having met the requirements set forth above, than he or she would have been entitled to on June 23, 2013. Sick leave usage after June 23, 2013, will come first from the sick leave accrued after June 23, 2013. An employee will continue to accrue sick leave after June 23, 2013, but it may not be used for sick leave payout purposes.

For example, if an employee's hourly rate is \$20 and his or her sick leave balance is 250 hours on June 23, 2013, then if he or she meets the eligibility requirements contained herein, the payout of a sick leave balance at the time of retirement will be based on the formula below, and shall be based on no more than 250 hours and an hourly rate of no more than \$20. This will occur even if the employee has subsequently earned more than 250 hours in sick leave or received a pay increase to an hourly rate higher than \$20. In this example, if the employee uses 200 hours of sick leave after June 23, 2013, thereby reducing his or her sick leave payout balance to 50 hours, the employee will only be entitled to sick leave payout of 50 hours at \$20 per hour, regardless of any sick leave accrued after June 23, 2013.

~~10.3.6.5~~ 10.3.10 Payout shall be determined as follows.

10.3.10.1 If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or Estate shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, termination or death, whichever comes first as of September 30, 2012 at the time of retirement, termination or death, whichever comes first multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death as follows:

10.3.10.2 Less than 400 hours: Hours accumulated × 50% of final hourly rate
or 400 - 799 hours: Hours accumulated × 60% of final hourly rate
or 800 - 1200 hours: Hours accumulated × 75% of final hourly rate



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10.3.11 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

Proposed CEO language:

18.2 Any employee hired on or after September 30, 2012, shall not be eligible for sick leave payout.

18.3 Upon a release of claims set forth in the AFSCME complaint, being signed by the retiree, retroactive payments, including interest shall be made to eligible employees in the Federated City Retirement System, who retired on or after January 1, 2012, and before the date that this proposal is ratified and approved by the City Council, who were eligible for a sick leave payout at the time of their retirement under the requirements contained herein and did not receive the payout because the payouts were eliminated prior to their retirement. Retirees will be eligible for a payout of the amount of unused sick leave hours accrued as of December 31, 2011, or the date of their retirement, whichever is less. Payouts will be based on the provisions contained in Sections 10.3.9 and 10.3.10 below. This will resolve any claims related to sick leave payout upon retirement.

[Insert appropriate language regarding the resolution of pending administrative and legal action pertaining to AFSCME Unfair Practice Charge No. SF-CE-945-M. Provided IBEW agrees with this Agreement, Case No. 1-12-CV-237150 ("AFSCME/IBEW" the Unions will withdraw. The City is responsible for resolving Case No. 1-12-CV-224197 ("Deisenroth"). The City in resolving the "Deisenroth" case will deal directly with the Plaintiff's Counsel]

18.4 For employees hired on or before September 29, 2012, a sick leave payout shall be made to full-time and part-time benefited employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:

18.4.1 Federated City Retirement System Plan. The employee is: a) a member of the Federated City Retirement System Plan; and, b) retired under the provisions cited in the plan; and, c) credited with at least fifteen (15) years of service in this retirement plan, or credited with at least ten (10) years of service prior to a disability retirement.

18.4.2 Terminated Separated Employee with Vesting Rights. The employee has: a) terminated separated from service with the City in good standing and has not been terminated for cause as defined by San José Municipal Code Section 3.04.1370; and, b) retained vesting rights in a retirement system according to

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provisions in the San José Municipal Code; and, c) following such termination separation, qualifies for retirement and retires under the provisions cited in the code; and, d) has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.

18.4.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan.

18.4.4 Death of Terminated Separated Employee. The estate of any full-time or eligible part-time employee who: a) had terminated has separated from service with the City in good standing, and has not been terminated for cause as defined by San José Municipal Code Section 3.04.1370 but had retained vesting rights in a retirement system according to provisions in the San José Municipal Code; and, b) dies (on or after July 10, 1977) prior to becoming eligible for retirement allowances as cited under provisions of the San José Municipal Code; and, c) has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.

18.5 Effective June 23, 2013, for purposes of calculating a sick leave payout, an employee's sick leave balance and hourly rates shall be frozen. This means that an employee will receive no more for a sick leave payout, after having met the requirements set forth above, than he or she would have been entitled to on June 23, 2013. Sick leave usage after June 23, 2013, will come first from the sick leave accrued after June 23, 2013. An employee will continue to accrue sick leave after June 23, 2013, but it may not be used for sick leave payout purposes.

For example, if an employee's hourly rate is \$20 and his or her sick leave balance is 250 hours on June 23, 2013, then if he or she meets the eligibility requirements contained herein, the payout of a sick leave balance at the time of retirement will be based on the formula below, and shall be based on no more than 250 hours and an hourly rate of no more than \$20. This will occur even if the employee has subsequently earned more than 250 hours in sick leave or received a pay increase to an hourly rate higher than \$20. In this example, if the employee uses 200 hours of sick leave after June 23, 2013, thereby reducing his or her sick leave payout balance to 50 hours, the employee will only be entitled to sick leave payout of 50 hours at \$20 per hour, regardless of any sick leave accrued after June 23, 2013.

18.6 Payout shall be determined as follows.

18.6.1 If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or Estate shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, termination or death, whichever comes first as of September 30, 2012 at the time of retirement, termination or death, whichever comes first



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multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death as follows:

18.6.2 Less than 400 hours: Hours accumulated \times 50% of final hourly rate
 or 400 - 799 hours: Hours accumulated \times 60% of final hourly rate
 or 800 - 1200 hours: Hours accumulated \times 75% of final hourly rate

18.7 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.



